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OFFICE OF PETITIONS

In re Patent No. 7371865	:	
Acemoglu et al.	:	DECISION ON REQUEST
Issue Date: 05/13/2008	:	FOR RECONSIDERATION OF
Application No. 10/502177	:	PATENT TERM ADJUSTMENT
Filed: 07/21/2004	:	and
Attorney Docket No. PC/4-32342A	:	NOTICE OF INTENT TO ISSUE
	:	CERTIFICATE OF CORRECTION

This is a decision on the "PETITION FOR PATENT TERM ADJUSTMENT PURSUANT TO 37 C.F.R. § 1.705(d)," filed on June 13, 2008. Patentees request that the Patent Term Adjustment for the above-identified patent be increased by 49 days from 315 days to 364 days.

The request for reconsideration of the patent term adjustment indicated in the patent is **GRANTED**.

The patent term adjustment indicated in the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of three hundred sixty-four (364) days.

On May 13, 2008, the above-identified application matured into U.S. Patent No. 7,371,865. The instant request for reconsideration filed on June 13, 2008 was timely filed within 2 months of the date the patent issued. See § 1.705(d). The Patent issued with a revised Patent Term Adjustment of 315 days. Patentees contend that the reduction in patent term adjustment of 49 days for the filing of a miscellaneous incoming letter after the mailing of the notice of allowance, is incorrect and should be removed. Specifically, patentees assert that the letter filed on March 26, 2008 was a power of attorney and was

not a failure to engage in reasonable efforts to conclude processing or examination.

The OG Notice¹ states that:

Accordingly, the Office is publishing this notice to provide guidance in interpreting the provisions of 37 CFR 1.704(c)(10) to clarify that submission of certain papers after a "Notice of Allowance," which do not cause substantial interference and delay in the patent issue process, are not considered a "failure to engage in reasonable efforts" to conclude processing or examination of an application. The following are examples of such papers: (1) Issue Fee Transmittal (PTOL-85B), (2) Power of Attorney, (3) Power to Inspect, (4) Change of Address, (5) Change of Status (small/not small entity status), (6) a response to the examiner's reasons for allowance, and (7) letters related to government interests (e.g., those between NASA and the Office). Therefore, the submission of these papers after a Notice of Allowance will not be considered a "failure to engage in reasonable efforts" to conclude processing or examination of an application and would not result in reduction of a patent term adjustment pursuant to 37 CFR 1.704(c)(10). Papers that will be considered a failure to engage in reasonable efforts to conclude processing or examination of an application include: (1) a request for a refund; (2) a status letter; (3) amendments under 37 CFR 1.312; (4) late priority claims; (5) a certified copy of a priority document; (6) drawings; (7) letters related to biologic deposits; and (8) oaths or declarations. 37 CFR 1.704(c)(10).

Patentees are correct. A review of the official file reveals that this letter was in fact a power of attorney.

Accordingly, the subject letter is not considered a "failure to engage in reasonable efforts" to conclude processing or examination of an application. Patentees should not have been

¹ See Revision of Patent Term Extension and Patent Term Adjustment Provisions, 1282 O.G. 100, 69 Fed. Reg. 21704, April 22, 2004.

assessed the 49 days of applicant delay for the filing of the "Additional Power of Attorney" filed on March 26, 2008.

In view thereof, the patent term adjustment indicated on the patent should be 364 days (455 days of Office delay and 91 (140 - 49) days of applicant delay).

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application is being referred to the Certificate of Correction Branch for issuance of a certificate of correction to rectify this error. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by THREE HUNDRED SIXTY-FOUR (364) days.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3231.



Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 7,731,865 B2

DATED : May 13, 2008

INVENTOR(S) : Acemoglu et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by (315) days

Delete the phrase "by 315 days" and insert – by 364 days--